

No. 78-238

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

RONALD DICK, PETITIONER

v.

UNITED STATES OF AMERICA

**ON MOTION FOR LEAVE TO FILE A PETITION
FOR A WRIT OF PROHIBITION**

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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1. Petitioner seeks leave to file a petition for a writ of prohibition against the United States to prevent the use of a psychiatric diagnosis of petitioner.

This diagnostic report is discussed in *Dick v. United States*, 339 F. Supp. 1231 (D. D.C. 1972), an action brought by petitioner to challenge the denial of a security clearance. Petitioner had been denied the clearance on the basis of the conclusion of an examining psychiatrist, Dr. Louis Linn, that petitioner suffered from a paranoid personality disorder. The district court remanded the case to the agency to allow petitioner's expert witness to review the background information that the agency had provided to Dr. Linn. Since petitioner had accepted employment with the Social Security Administration for which no security clearance was required, he did not pursue the matter further (Pet. App. 11a).

Subsequently petitioner was involuntarily retired from his position with the Social Security Administration based on a finding that he was totally disabled because of his psychiatric condition. Petitioner argues that the Social Security Administration physician, Dr. James Wellhouse, did not make a new diagnosis, but instead fraudulently put forth the diagnosis made by Dr. Linn. Petitioner apparently contends that reliance on the Linn report would violate the decision in *Dick v. United States, supra*.

2. Petitioner seeks a writ of prohibition ordering the United States to remove the allegedly fraudulent Wellhouse report from his files and prohibiting any further use of any part of the report that is not shown to be new evidence. But the writ of prohibition is a "drastic and extraordinary" remedy that "should be resorted to only where appeal is a clearly inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 259-260 (1947). There is no reason for the Court to exercise this extraordinary power in the instant case, because adequate judicial remedies are available to petitioner.

Petitioner sought judicial review of his dismissal from the Social Security Administration. His appeal from the order of the United States District Court for the District of Maryland granting summary judgment for the Secretary in that action is pending in the United States Court of Appeals for the Fourth Circuit. *Dick v. Califano*, No. 78-1400. We are advised by the clerk of that court that the briefs have not yet been filed. Because the gist of petitioner's complaint before this Court appears to be that the Social Security Administration and the Maryland district court erroneously relied on the Wellhouse report, when it was no more than the supposedly discredited Linn report, petitioner should

present these arguments in the first instance in his pending appeal in the Fourth Circuit.¹ Then, if he is unsuccessful, he can present his contentions to this Court by a petition for a writ of certiorari.

It is therefore respectfully submitted that the motion for leave to file a writ of prohibition should be denied.

WADE H. MCCREE, JR.
Solicitor General

SEPTEMBER 1978

¹Petitioner also has raised the same or similar issues in two cases brought against Dr. Wellhouse. *Dick v. Wellhouse*, D. D.C., No. 75-0343, dismissed July 25, 1975; *United States ex rel. Dick v. Wellhouse*, D. D.C., No. 78-0001, dismissed March 10, 1978, aff'd, C.A. D.C., No. 78-1350, May 22, 1978.